IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.690 OF 2006

M/s.Bhagwandas Khushaldas & Co. ....Petitioner

V/s.

State of Maharashtra & Ors. ....Respondents

Mr.S.G. Karandikar for the Petitioner.

Mr.A.H. Palekar, AGP for the Respondents.

CORAM : R.M. SAVANT, J.
DATED : 7TH JUNE, 2007.

P.C. :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. This Petition filed under Article 227 of the Constitution of India impugns the order dated 3.12.2005, passed by the learned Civil Judge (S.D.) Palghar. By which order the application for restoration of possession made by the Petitioner came to be rejected on the ground that the restoration of status-quo ante involved question of law and facts and therefore instead of deciding the said application, the learned Judge directed that the suit be decided

expeditiously within a span of six months.

3. Such of the facts which are necessary to be cited are stated thus :-

. The Petitioner is the original Plaintiff in R.C.S. No.5 of 2003. The said suit has been filed on an apprehension that the Petitioner would be dispossessed from the land in question being survey No.216, Hissa No.1/1/1/1A of village Asangaon, Taluka Dahanu admeasuring 60-H. The said land was allotted to the Petitioner for production of salt on 25.4.1977 and the written lease was executed on 1.1.1978. The possession was given to the Petitioner on execution of the said lease. On 23.4.1978 mutation entry No.1779 was recorded. The Petitioner having come to know that the said land was allotted by the State Government in favour of a private company for establishing a power project, the Petitioner had filed Writ Petition No.355 of 1990. The said Petition was disposed of by directing the authorities that the Petitioner should not be dispossessed without giving him a hearing. In view of the threats given to him of dispossession, the Petitioner filed another Writ Petition being No.3694 of 1993. The said Writ Petition was disposed of by an order dated 17.7.1993 that without hearing the

Petitioner, no final decision should be taken and in case the Petitioner is dispossessed, the said decision should not be implemented for a period of two weeks. It appears that accordingly the Petitioner was heard and a decision was communicated to the Petitioner on 10.1.2003 to hand over possession of the suit land.

4. The Petitioner therefore being aggrieved by the said decision dated 10.1.2003, filed R.C.S. No.2/2003 in the Court of Civil Judge (J.D.) Palghar for injunction. In the said suit, an ad-interim order came to be passed on 24.1.2003 granting ad-interim order of status-quo. However, the said order was signed by the learned Judge according to the Petitioner on 27.1.2003. The Petitioner's advocate vide his letter dated 25.1.2003 had also communicated the said order of status-quo to the authorities. Acceptance of the said letter has been acknowledged by the authorities vide their letter dated 27.1.2003. The Petitioner was dispossessed on 29.1.2003. The Petitioner filed an application for restoration of possession on 25.4.2003.

5. The said application came to be rejected by the impugned order dated 3.12.2005. As indicated above, the said application has not been dealt with on

merits. The learned Judge has observed that the application for restoration of possession involved a question of law and fact and therefore, has directed the expedition of the suit of the Petitioner and its disposal within six months.

6. It is accepted position between the parties that the suit is at the same stage as it was on the date when the order came to be passed and no progress has been made in the said suit. It is the contention of the learned counsel for the Petitioner that in spite of communication of the said ad-interim order to the authorities, the Petitioner has been dispossessed. He therefore, contends that since there has been no progress in the said suit, though it is expedited and was to be disposed of within six months, the same operates to his prejudice as his application for restoration of possession has not been considered on merits.

7. On the other hand, it is contended by the learned AGP that the land in question has already been allotted to B.S.E.S. and therefore, the suit itself has become infructuous. The learned AGP further contends that the B.S.E.S. is not a party before this Court.

8. Be that as it may, since the dispossession of the Petitioner was in the teeth of a communication of the petitioner's advocates letter dated 25.1.2003 by which the status-quo order was communicated and since the said suit has yet not been disposed of, the interest of justice would be served if the Petitioner's application Exhibit 29 is considered on its own merit and disposed of in accordance with law. No doubt a period of about one and half years has elapsed since passing of the impugned order dated 3.12.2005. However in view of the fact that the Petitioner's suit would itself become infructuous if the application is not decided and since the prayer of the Petitioner in the said application goes to the root of the matter, in so far as the suit is concerned, it is necessary that said application Exhibit 29 is decided.

9. In that view of the matter, the impugned order dated 3.12.2005 is set-aside and the Application for restoration is remanded to the concerned learned Civil Judge (J.D.) Palghar for a decision afresh in accordance with law. On such remand, the said application will be decided on its own merits and in accordance with law, within a period of two months

from the receipt of this order.

10. All contentions of the parties are kept open.

11. Rule is accordingly made absolute in the aforesaid terms.

(R.M. SAVANT, J)